

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KIRK D. ROBINSON,

Plaintiff,

vs.

SHAWN EATHERTON, Buffalo
County Attorney; PATRICK LEE,
Buffalo County Attorney; KARI FISK,
Buffalo County Attorney; MIKE
MEFFOR, Buffalo County Attorney;
NIEL MILLER, Buffalo County
Sheriff's Office; CHAD HUNT, Buffalo
County Jail Lt.; BRANDON
BRUEGEMANN, Buffalo County
Sheriff Investigator; GERALD
JORGENSEN, Judge; RYAN
CARSON, Judge; STEPHEN POTTER,
Attorney; and NANCY S. FREBERG,
Attorney;

Defendants.

8:19CV283

**MEMORANDUM
AND ORDER**

This matter is before the court on Plaintiff's motion to add evidence and incidents ([filing no. 27](#)) filed on August 7, 2019. On August 6, 2019, the court entered a Memorandum and Order and Judgment dismissing Plaintiff's action without prejudice as the Complaint failed to state a claim upon which relief can be granted. (Filing Nos. [25](#) & [26](#).)

Liberally construed, Plaintiff's motion seeks to supplement his Complaint with additional claims. Rule 15 of the Federal Rules of Civil Procedure provides that “[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or

event that happened after the date of the pleading to be supplemented.” [Fed. R. Civ. P. 15\(d\)](#). In addition, the rule states “[t]he court may permit supplementation even though the original pleading is defective in stating a claim or defense.” *Id.*

Here, Plaintiff seeks to add claims related to an alleged assault that occurred at the Buffalo County Jail and also alleges a violation of his Sixth Amendment right based on the Diagnostic and Evaluation Center’s (“DEC”) refusal to permit Plaintiff to contact his counsel. The court will deny Plaintiff’s motion to add these claims as this case has already been dismissed without prejudice and because Plaintiff’s motion fails to identify any proper defendant responsible for the alleged assault or Sixth Amendment violation. *See Hilton v. South Carolina Pub. Railways Comm’n*, 502 U.S. 197, 200–01 (1991) (a state, its agencies and instrumentalities, and its employees in their official capacities are not ‘persons’ “as that term is used in § 1983, and [are] not suable under the statute, regardless of the forum where the suit is maintained”). Accordingly,

IT IS ORDERED that Plaintiff’s motion to add evidence and incidents ([filing no. 27](#)) is denied.

Dated this 9th day of August, 2019.

BY THE COURT:

s/ *Richard G. Kopf*
Senior United States District Judge